



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/748,745

12/30/2003

Jonathan Leblang

MIPS.100A

2677

20995

7590

05/11/2011

Knobbe Martens Olson & Bear LLP

2040 MAIN STREET

FOURTEENTH FLOOR

IRVINE, CA 92614

EXAMINER

JOSEPH, TONYA S

ART UNIT

PAPER NUMBER

3628

NOTIFICATION DATE

DELIVERY MODE

05/11/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com

efiling@kmob.com

eOAPilot@kmob.com

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

7
8 *Ex parte* JONATHAN LEBLANG
9

10
11 Appeal 2010-004550
12 Application 10/748,745
13 Technology Center 3600
14

15
16 Before HUBERT C. LORIN, ANTON W. FETTING, and
17 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.
18 FETTING, *Administrative Patent Judge*.

19 DECISION ON APPEAL

STATEMENT OF THE CASE¹

Jonathan Leblang (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-13 and 50-62, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of classifying articles based on article characteristics (Specification ¶ 0004).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

1. An article processing system, comprising:

[1] a database that stores

article identification information and

article location information

for a plurality of articles;

[2] a first module that determines

at least a shipment date when a pending user order is to be shipped, wherein the pending order was placed via a computer network during a first network session;

[3] a second module that,

based at least in part on information retrieved from the database,

identifies at least a first article

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed July 14, 2009) and Reply Brief ("Reply Br.," filed November 3, 2009), and the Examiner's Answer ("Ans.," mailed September 3, 2009).

1 that can be added to the pending order
2 within a first amount of time
3 without delaying the shipment date of the pending
4 order; and
5 [4] a third module that
6 causes a notification to be presented to the user,
7 wherein the notification indicates
8 that the user can add at least the first article to the
9 pending order
10 without delaying the pending order shipment.

11 The Examiner relies upon the following prior art:

Knorr	US 2002/0077929 A1	Jun. 20, 2002
Shinohara	US 2003/0097311 A1	May 23, 2003
Silverbrook	US 2003/0130903 A1	Jul. 10, 2003
Marston	US 2004/0260710 A1	Dec. 23, 2004
Shmukler	US 2005/0010857 A1	Jan. 13, 2005

12 Claims 1, 3, 6, 9, 10, 12, 13, 50, 52, 55, 58, 59, 61, and 62 stand rejected
13 under 35 U.S.C. § 102(b) as anticipated by Knorr.

14 Claims 2 and 51 stand rejected under 35 U.S.C. § 103(a) as unpatentable
15 over Knorr and Marston.

16 Claims 4 and 53 stand rejected under 35 U.S.C. § 103(a) as unpatentable
17 over Knorr and Shinohara.

18 Claims 5 and 54 stand rejected under 35 U.S.C. § 103(a) as unpatentable
19 over Knorr, Official Notice, and Shmukler.

1 Claims 8, 11, 57, and 60 stand rejected under 35 U.S.C. § 103(a) as
2 unpatentable over Knorr and Official Notice.

3 Claims 7 and 56 stand rejected under 35 U.S.C. § 103(a) as unpatentable
4 over Knorr and Silverbrook.

5 ISSUES

6 The issues of anticipation and obviousness turn primarily on whether
7 Knorr describes identifying an article for adding and notifying the customer
8 that that article can be added to an order without delaying the shipment.

9 FACTS PERTINENT TO THE ISSUES

10 The following enumerated Findings of Fact (FF) are believed to be
11 supported by a preponderance of the evidence.

12 *Facts Related to the Prior Art*

13 *Knorr*

14 01. Knorr is directed to electronically creating and managing
15 pending orders. The present invention includes methods and
16 systems whereby end users may select catalogued items from one
17 or multiple e-vendors for immediate entry into an order pending
18 database, for later transmission to an electronic vendor. Knorr ¶
19 0002.

20 02. Knorr describes an example in which a customer wishes to buy
21 an item for Mother's Day several weeks prior to the occurrence of
22 Mother's Day. The order pending system pends the transaction for

1 later transmission as an order to the parent e-vendors. Knorr ¶
2 0050.

3 03. Knorr's order pending database holds the information for the
4 order pending shopping cart for that event. The data in the order
5 pending database is fluid or variable at this point and may be
6 changed by the purchaser. Selection in the order pending shopping
7 cart can be processed and updated in batch mode, for example, at
8 night, for access by the electronic vendor(s) who had transactions
9 complete during the prior day. The vendor can use the time
10 between the electronic hold and the ultimate order execution to
11 plan inventory and interact with the purchaser for suggestive
12 sellings, i.e., up-selling and or cross-selling. Knorr ¶ 0065.

13 04. Knorr's existing pending orders may be shown, e.g., with an
14 icon or thumbnail picture of a selected item, in conjunction with
15 upcoming events in the personal scheduler of the purchaser. This
16 may be linked to suggestive selling or upgrading solicitations or
17 inducements, e.g., special offers or coupons. Knorr ¶ 0042.

18 ANALYSIS

19 *Claims 1, 3, 6, 9, 10, 12, 13, 50, 52, 55, 58, 59, 61, and 62 rejected under 35*
20 *U.S.C. § 102(b) as anticipated by Knorr.*

21 We are unpersuaded by the Appellant's arguments that Knorr fails to
22 describe identifying an article for adding and notifying the customer that that
23 article can be added without delaying the shipment. Appeal Br. 7-11. Knorr
24 pends a transaction allowing additional items to be added to an order without
25 changing the order parameters. Knorr does this so additional items may be

1 sold in the same order. FF 02 - 03. If this were the extent of how Knorr
2 processes an order, the Appellant would have a point. But Knorr also
3 allows a customer to establish a ship date at some point in the future such
4 that the pending action does not affect the ship date. FF 02. Thus, unlike
5 the case the Appellant appears to postulate in which an order is shipped as
6 quickly as possible after order completion, Knorr allows a customer to build
7 in a buffer and then Knorr allows vendors to take advantage of that buffer to
8 sell additional items without affecting the order parameters, such a ship date.
9 Since the order parameters are unchanged, the customer is implicitly notified
10 that the additional items will not affect the ship date.

11 We are unpersuaded by the Appellant's reliance on the argument in
12 claim 1 that Knorr fails to describes notifying at least in part based on the
13 user accessing the network in claim 3, as again Knorr relies on recognizing
14 that access to sell more items implicitly notifying the customer.

15 We are unpersuaded by the Appellant's argument that Knorr fails to
16 describe the notification including an order incentive offer in claim 6, as the
17 pending orders which are the subject of Knorr's implicit notification may be
18 linked to special offers or coupons. FF 04. In addition, as the Examiner
19 found at Answer 12-13, the content of the notification is not a structural
20 limitation and is therefore afforded no patentable weight in a system claim.

21 We are unpersuaded by the Appellant's argument that Knorr fails to
22 describe the first article being identified based in part on user history order
23 information retrieved from the database in claim 10, as Knorr describes
24 upselling during the pending period from items previously purchased. FF
25 03.

1 We are unpersuaded by the Appellant's argument that Knorr fails to
2 describe the first article being identified based in part on user preference
3 information retrieved from the database in claim 12, as Knorr describes
4 using a user's personal scheduler preferences for such additional selling. FF
5 04. Although the user's personal scheduler is not part of the database, the
6 data retrieved from such a scheduler would necessarily be entered into
7 Knorr's database for a vendor to retrieve such information. In addition, as
8 the Examiner found at Answer 12-13, Knorr's system certainly has the
9 capacity to use any data in its database and the only structural part of this
10 limitation is the capacity for such an operation in this system claim.

11 We are unpersuaded by the Appellant's argument that Knorr fails to
12 describe the notification being provided to the user after the pending order
13 was placed in claim 13, as Knorr describes such selling after the initial order
14 is entered. FF 03.

15 *Claims 2 and 51 rejected under 35 U.S.C. § 103(a) as unpatentable over*
16 *Knorr and Marston.*

17 The Appellant relies on the arguments in support of claim 1, other than
18 to argue the lack of a clear articulation of a rational for combining. We are
19 unpersuaded by this because the Examiner found that Knorr would
20 incorporate Marston to alert a user of a change.

21
22
23 *Claims 4 and 53 rejected under 35 U.S.C. § 103(a) as unpatentable over*
24 *Knorr and Shinohara.*

1 The Appellant essentially relies on the arguments in support of claim 1.
2 The argument that Shinohara's email fails to explicitly recite that the
3 notification of claim 1 does not negate the implicit notification from claim 1
4 that would also attach to any communication regarding the order.

5 *Claims 5 and 54 rejected under 35 U.S.C. § 103(a) as unpatentable over*
6 *Knorr, Official Notice, and Shmukler.*

7 Here we are persuaded by the Appellant's arguments that the applied
8 references fail to describe the notification including a link, wherein if the
9 user activates the link after the first amount of time, the user is provided a
10 message indicating that the first amount time to add articles to the pending
11 order has expired. The Examiner mentions Official Notice but fails to
12 provide any Official Notice evidence, but instead just reaches an
13 unsubstantiated legal conclusion of obviousness.

14 *Claims 8, 11, 57, and 60 rejected under 35 U.S.C. § 103(a) as unpatentable*
15 *over Knorr and Official Notice.*

16 Here we are persuaded by the Appellant's arguments that the applied
17 references fail to describe the location information being used by the second
18 module to determine how long it would take to transport the first article from
19 a storage area to a packing area, or the first article being identified based in
20 part on the quantity of the first article in inventory in an order fulfillment
21 center from which at least one article in the pending order is to be shipped.
22 The Examiner mentions Official Notice but fails to provide sufficient
23 Official Notice evidence to support the rejection.

24

Claims 7 and 56 rejected under 35 U.S.C. § 103(a) as unpatentable over Knorr and Silverbrook.

We are unpersuaded by the Appellant's argument that Knorr fails to describe a fourth module, that, during a second network session, provides that user with an interface via which the user can add at least the first article to the pending order in claim 7, as Knorr describes such selling after the initial order is entered. FF 03. The Examiner relies on Silverbrook merely for implementation details as to how a customer would access an order in Knorr.

CONCLUSIONS OF LAW

The rejection of claims 1, 3, 6, 9, 10, 12, 13, 50, 52, 55, 58, 59, 61, and 62 under 35 U.S.C. § 102(b) as anticipated by Knorr is proper.

The rejection of claims 2 and 51 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Marston is proper.

The rejection of claims 4 and 53 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Shinohara is proper.

The rejection of claims 5 and 54 under 35 U.S.C. § 103(a) as unpatentable over Knorr, Official Notice, and Shmukler is improper.

The rejection of claims 8, 11, 57, and 60 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Official Notice is improper.

The rejection of claims 7 and 56 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Silverbrook is proper.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1, 3, 6, 9, 10, 12, 13, 50, 52, 55, 58, 59, 61, and 62 under 35 U.S.C. § 102(b) as anticipated by Knorr is sustained.
- The rejection of claims 2 and 51 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Marston is sustained.
- The rejection of claims 4 and 53 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Shinohara is sustained.
- The rejection of claims 5 and 54 under 35 U.S.C. § 103(a) as unpatentable over Knorr, Official Notice, and Shmukler is not sustained.
- The rejection of claims 8, 11, 57, and 60 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Official Notice is not sustained.
- The rejection of claims 7 and 56 under 35 U.S.C. § 103(a) as unpatentable over Knorr and Silverbrook is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

Appeal 2010-004550
Application 10/748,745

1 mev

2